The Solicitors' Journal

(ESTABLISHED 1857.)

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VOL. LXXV. **Saturday, January 10, 1931.** No. 2

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Current Topics.

Sir Percival Clarke.

WE OFFER our hearty congratulations to Mr. PERCIVAL CLARKE on the well-deserved honour of knighthood that has been conferred upon him. The son of Sir EDWARD CLARKE, that great advocate of a past generation who is happily still with us, the new Knight, like his distinguished father, has shown all the characteristics of a learned and fair-minded lawyer. Since 1922 Sir PERCIVAL, as we must now call him, has been Recorder of Exeter, and the judicial qualities he has exhibited in that important office he has exemplified likewise in the work with which he is best known here in London, namely, that which has devolved upon him as Counsel for the Treasury at the Central Criminal Court. Appointed Junior Counsel to the Treasury at the Old Bailey in 1912, he has, since 1928, been the senior of the group of prosecuting Counsel for the Crown. In this work it has fallen to him to present the case for the Crown in a large number of important prosecutions, and in the performance of this task he has shown an effectiveness and at the same time a fairness which—especially the latter quality—would have seemed amazing to Old Bailey practitioners of a by-gone day. Apart from his work in court it is interesting to recall that he was associated with his father in bringing out the last edition of the classic treatise on Extradition by which Sir EDWARD CLARKE made his name widely known as a legal author.

Assessors in Traffic Cases.

A GREAT many journalists, who may or may not truly represent public opinion, are anticipating a multitude of difficulties under the new Road Traffic Act, and prophesying that the courts will be called upon to solve some novel and knotty problems. We doubt whether cases of careless driving or of driving while under the influence of drink will prove any more perplexing than many of the cases under the older statutes. Consequently, we do not find ourselves in sympathy with the demand for special courts to hear motor car cases, or for assessors to sit with judges or magistrates trying them in the ordinary courts. We do not regard traffic cases as essentially different from all others. In a complicated commercial case it is of advantage if the judge or the magistrate understands accountancy; in a charge of cruelty to a horse it is useful if he understands horses; but even if this kind of knowledge is not a part of his equipment he can appreciate the facts of the case if he is accustomed to following evidence and appreciating its value, and when necessary he can have the assistance of expert witnesses. So it is with the motor car case. A tribunal that includes a member or two acquainted with road traffic difficulties, who have handled cars themselves, and who can therefore realise a situation in its full significance, is at an advantage compared with a court of which no member has any first-hand experience of such things; but the latter is neither helpless nor incapable. If it should need expert guidance on some point, that guidance can be given from the witness-box by experts liable to cross-examination; such assistance may be as valuable as that afforded by assessors. Traffic cases are not so highly technical as to be incomprehensible to ordinary intelligent people; and motorists have no more right than other people to be tried by a particular class of tribunal. We recall an instance where it was suggested that a thief ought to be tried by a jury some of whose members were also thieves; that is the kind of absurdity to which this sort of demand tends to lead.

Modes of Judicial Address.

AS IS well known, each judge of the superior courts is addressed while on the bench as "My Lord" or "Your Lordship," even though he may not be a peer. It is interesting to remember, however, that this is a comparatively modern usage, for, till well on into the eighteenth century, only the three Chiefs were considered entitled to this dignified style of address, the puisnes being called "Sir." There is a story which tells of a member of the Bar who, while answering a question put to him by the Chief Justice, was asked another question by one of the puisnes, whereupon he said, with some asperity, "I will answer you, sir, after I have answered my Lord." Of judicial functionaries other than peers, who by custom are addressed as "My Lord," although they are not judges of the High Court, must be included the Chairman of the London Sessions, the post to which Mr. CECIL WHITELEY has just been appointed in succession to Sir ROBERT WALLACE, who has held it for well-nigh a quarter of a century. The traditional explanation of this anomaly is somewhat amusing. Serjeant ADAMS, the first paid assistant judge of the Middlesex Sessions, of which, in part, the London Sessions are the successors in title, when he took his seat intimated that he had Lord DENMAN'S authority for saying that he ought to be addressed as "My Lord," a title never given to other Chairmen of Quarter Sessions, unless they happened to be peers. Lord DENMAN, the story goes on, was afterwards asked whether he had ever given such directions, and he replied: "Well, the truth is, JACK ADAMS came to me and said that the Bar at Middlesex Sessions wished to know whether there would be any impropriety in their calling him 'My Lord,' and I told him I could see no objection to their styling him what they pleased, so as they did not call him Jack when he was on the bench, as that might appear disrespectful to a learned judge"! A qualified permission was thus interpreted as an express ordinance. Whether this is the true explanation of the practice we do not pretend to assert, but it is, at all events, a not improbable one in view of the many other amusing stories that have come down to us regarding Serjeant ADAMS and his characteristic sayings and doings.

In the Inferior Courts.

In the county courts the judge is addressed as "Your Honour," a style of address which formerly was given to the Master of the Rolls, and which to this day is given in Scotland to burgh magistrates, whereas the Scottish Sheriff, who corresponds in large measure to our county court judge, is "My Lord." Curiously enough, here, in England, we reserve what might well be regarded as the most exalted title of address, namely, "Your Worship" to the least exalted of our judicial functionaries—justices of the peace sitting in petty sessions. Unfortunately, this mode of address has been apt on the lips of inferior officers to be degraded into something the very antithesis of dignified. With his observant eye and his keen sense of humour, Dickens long ago noticed that to police officers a magistrate was not "Your Worship" but "Your Washup." So we learn from that work of his, which never fails to evoke a hearty laugh from its every page—the veracious history of the Pickwick Club which has a peculiar fascination for all members of the legal profession.

Accessories and the Death Penalty.

The cases of the two young men Betts and Ridley indicate a possible reform in the law of murder, which both those who approve and those who disapprove of the death sentence might support, if a bill properly framed for the purpose were presented to Parliament. These youths agreed to rob an old man, who, to their knowledge, would be carrying a considerable sum of money. They procured a motor car, drove up to a place which they knew their victim would pass, and, when he did so, Betts jumped out of the car and robbed him after violently assaulting him to overcome his resistance. From the injuries thus received the old man died, and the two youths, very easily detected by their lavish expenditure of the money thus obtained, were tried and convicted of murder. Betts, whose hand killed the man, was executed, and, given a country where capital punishment exists, he appears to have deserved it. It was obvious, however, that the guilt of the man who remained in the car was of a different order. Betts killed the old man in the course of committing a felony, and that was murder. Ridley conspired with Betts in the commission of the felony, and was thus technically accessory before the fact, and so a principal in the crime of murder. The death of the victim of an assault, however, is not the natural and probable result of such assault, though a possible one. Ridley might have preferred to go without the money rather than to obtain it by so savage an attack, and it was reasonably plain when the sentence was passed that he would be given the benefit of the doubt and reprieved. The suggestion here made is that the sentence of death should not be compulsory in the case of accessories. It is by far the most impressive manifestation of the law when it is a real sentence, but, if all in court know it will not be carried out, its impressiveness in fact lowers the dignity of the law, and it is little more than a scene in a theatre. The question of how to modify the present law to effect such a reform invokes difficulties, but they should not be insuperable. Plainly, accessories before the fact must, in the case of deliberate conspiracy or incitement to murder, be liable as principals, and it is certainly arguable that the American gangster is a worse and more cowardly character than the gunman, his servant, "bumping off" victims at his behest. Different considerations, however, apply to accessories in a conspiracy to commit another felony, and the case of motor bandits who, in flight, run down and kill pedestrians is also likely to come up for consideration. If the pursuit of such bandits is "hue and cry," then *Jackson's Case* (1664), 1 Hale 464, is authority that the men sitting in the car but not driving are guilty of murder equally with the driver if a pedestrian is run down and killed, but here again, there is a great difference in the degree of guilt.

The Draft Highway Code.

The draft Highway Code, prepared by the Ministry of Transport under s. 45 of the Road Traffic Act, 1930, has been circulated among the various authorities and representatives of other interests concerned for their observations. Sub-section (2) requires it to be approved by both Houses of Parliament, and, by sub-s. (3) it must be issued at a price not exceeding a penny. Its statutory importance is conferred by sub-s. (4), which enacts that failure to observe any rule in the Code shall not in itself be criminal, but it can be relied upon by any party to any proceedings as tending to establish or to negative any liability which is in question in those proceedings. This appears to render it binding on the courts to the extent that, in a civil case, the burden of proof of negligence may be shifted by its application. To take a very important instance, pedestrians are directed "always walk on the footpath where one is provided." Now, in *Boss* v. *Litton* (1832), 5 C. & P. 407, the plaintiff, although a footpath was provided, was walking along the fairway of the road when he was knocked down by a cart which the defendant was driving. Evidence was about to be given that the footpath was unfit for use, when Denman, C.J., observed, "I do not think that any more evidence need be given on that subject. The policeman has proved the state of the path. A man has the right to walk in the road if he pleases. It is a way for foot passengers as well as carriages." This old case has never been over-ruled, and the pedestrian's legal right to choose whether he will walk on the footpath or the road has hitherto been unquestioned. Henceforth, if the Code remains unaltered, and he chooses to disregard it in this respect, he will have to bring his case within the rule laid down in *Davies* v. *Mann* (1842), 10 M. & W. 546 (the "donkey case") before he can recover damages from a driver who has run him down, since, in declining to avail himself of the footpath, he has disobeyed the Code, and thus himself been guilty of negligence. Where no footpath is provided, pedestrians are recommended to walk on the right of the road, so that they can face their danger. Thus, overtaking traffic would normally pass them on the left, but the Code does not direct them as to the side on which they should pass on-coming traffic. A direction might be useful that, normally, they should keep to the extreme right, and thus avoid being run down by a vehicle overtaking the one immediately in front. They are told that they should signal, and the natural signal in such case would be a "hand-off" with the left arm extended, and the left hand sweeping leftwards with the palm foremost. If, for any reason, the pedestrian desired to pass on the other side, he would reverse the signal. Persumably that for crossing the road will be an arm extended just before the step off the pavement—and here again, if a pedestrian is on a road where special crossings are marked for him, and he fails to avail himself of them, he will put himself in the wrong, for he will violate the direction given in the Code. These special crossings are not yet common, but the prophecy may be made that they will increasingly become so. Walkers are also told to keep their dogs on the lead when traffic is heavy, which may be taken to mean that, if one disregards this rule while walking along a main road, he will not be able to recover damages if his animal is killed or injured, unless he can prove affirmatively that the driver of the vehicle responsible could have avoided the accident. And, conversely, if occupants of a car are injured by collision with his dog, he will be liable.

With respect to animals generally, those leading them will be required to keep on their off side, which, as the Code points out, may change the age-long habits of men in charge of horses. As to how far the Code could affect the law as to stray animals on highways, as laid down in such cases as *Hadwell* v. *Righton* [1907] 2 K.B. 345, and *Neath's Garage* v. *Hodges* [1916] 1 K.B. 206, might be open to question. It is submitted that the law so laid down, however suitable for country lanes, is now inappropriate when applied to roads of the "A" class,

on which cars are constantly being driven at speeds exceeding forty miles an hour. Stray animals should be fenced off such roads, if not by the highway authority, then by the owners of adjacent fields. In the case of railways, it is, of course, the duty of the company to fence off, speeds of forty miles an hour not being regarded by our ancestors with the familiarity which brings contempt.

The question of behaviour at cross-roads is of great importance, and we discussed the authorities applicable in two notes last year (see 73 SOL. J., pp. 97-98). These at the time were mainly decisions of Scottish Courts, and we may refer again to *Buntin or McNair* v. *Glasgow Corporation* (1923), S.C. 397, and *Hutchison* v. *Leslie* (1927), S.C. 95. Since then, our own courts have had to consider a collision at an ordinary crossing in *Service* v. *Sundell* (1929), 46 T.L.R. 12, and at a "Y" junction in *Cooper* v. *Swadling* [1930] 1 K.B. 403, and, in the House of Lords [W.N.] 1930, 204. It cannot, however, be said that these cases have left the law as to contributory negligence in a very satisfactory condition. The Code, in effect, adopts the rule laid down in the Scottish cases, namely, that the duty of care in approaching a cross-road is laid on both drivers, but especially on that one who is travelling on the less important road. As a condition precedent for bringing this rule into force at any particular corner, there will have to be warnings on each road, showing which has priority, and it is understood that these are already designed, and will soon be placed in their proper positions. Doubt may, however, be expressed whether the rule of the sea, which places the responsibility of avoiding collision on the master of one particular vessel, when two appear to be approaching each other, in a way which makes them likely to come together, is not the better solution. For divided responsibility makes for uncertainty, whereas if the driver on the cross-road knows that he is responsible for choosing the proper moment to emerge out of it, and into or across the main road, confusion will be avoided, and the cars proceeding along it will maintain their normal speed. For such a rule to be workable, however, it would be necessary that the cross-road driver should have a full view of the main road both ways before entering it, and, when that is impossible, the drivers of all vehicles approaching the cross-road should be required to proceed dead slow.

Even before cars were on the roads, drivers of carriages and carts had a few primitive signals, which have been considerably elaborated by the hitherto unofficial and unwritten custom of car drivers. The code now stereotypes most of these signals, giving them official recognition, together with one or two conveyed by the whips of horse-drivers. This is all to the good, and the details no doubt will be agreed between the Minister of Traffic and such bodies as the Automobile Association. It has been suggested that the signal "You may now pass me" may convey an assurance that the road is clear for the purpose. The proper interpretation should be "I am now ready to let you pass me, and know of no reason why you should not do so." This would prevent the signal being given at an obviously dangerous place, as in a narrow road with another vehicle approaching, or at a blind corner, while falling short of a guarantee or assurance of safety. This point should no doubt be made clear.

To cross, for example, the Thames Embankment between Waterloo and Charing Cross Bridges may be regarded as a much more perilous undertaking than to traverse an ordinary railway line as a trespasser (apart from the recently-added peril of electricity), and the enormous number of accidents on highways suggests that public road-sense has not kept pace with the acceleration of speed. Until that happens, the accidents will continue, but the Highway Code is a step in the right direction, and if its rules, and the benevolent advice it disseminates, can save even a few of them, it will have served a good purpose.

Income Tax Anomaly.

THE Inland Revenue Department has been sending out recently notices of assessment in respect of the Income tax year 1930-31, and recipients of these papers have deduced, *vide Morning Post*, a seeming disposition on the part of the department to bring into operation "every piece" at its disposal "of squeezing machinery" for the production of "results approximating as nearly to Mr. SNOWDEN's expectations as possible." It is right, however, to point out that the department is not absolutely blood-thirsty. The department appears to be deliberately bent on blessing certain income taxpayers to the extent of 2½ per cent. because of its blind devotion to some illogical rule it has laid down in regard to the assessment of items of income received in the year of tax for the first time.

Since the method of assessing Income tax on the average of the income for three years was abolished, taxpayers have been assessed on the income of the previous year, and this method has been found very just in practice. But for some reason difficult to appreciate, the Inland Revenue applies a different rule to "income first arising" in the previous year. Apparently, the character of the income is immaterial. It may be in the nature of dividends received for the first time on a new investment. But a striking illustration arises over the General Election held in May, 1929. Many barristers and others were then engaged all over England as returning officers and polling sheriffs. For their services they received fees and, generally speaking, after the settlement of election accounts by candidates, payment was made, in September, 1929, and onwards, to the officers in question. Returns for income received in the year ending 5th April, 1929, were issued to taxpayers early in the summer of 1929 for the imposition of the tax for the year 1929-30, and as a rule these returns were made to and filed with the department by the taxpayer not later than August, 1929. These returns were called for and were made for the purpose of enabling assessments to be made for the year ending 5th April, 1930. Taxpayers in receipt of the election fees in question naturally returned these as part of their income *for the year ending 5th April*, 1930, and it would follow that they should expect to be assessed in respect thereof for the year ending 5th April, 1931. The Inland Revenue Commissioners announce that this expectation is wrong. Election fees must, they say, be divorced from that return in order that the department may assess Income tax by way of "Additional First Assessment" upon such fees as effeiring to the year ending 5th April, 1930. In cases of liability to sur-tax, the subject is assessed to the corresponding tax as for that year. Supposing one has received his first fee from a journal for an article, the same rule as in the case of election fees is applied, so that its ambit is very far-reaching. It applies apparently to every new source of income, whether in its nature recurring or spasmodic or such as may never be received again. Although well aware that the election fees income in question was of a non-recurring nature, the department has also sought in many cases to assess the recipients in respect of the same income for the year ending 5th April, 1931, at 4s. 6d. per £. Upon protests being made against this double imposition, the department has replied that, if such fees are not received during the current year, a rebate will be allowed. Upon the protests being pressed, the notices of assessment for 1930-31 have been discharged. It is obvious to anyone that even if another General Election is held before 5th April next, the payments to election officials may not be the same as in the case of the last. The financial result of the method of collection in question, is that for all other income the subject received in the year ending 5th April, 1930, he is liable for and is assessed to tax at the current rate of 4s. 6d. per £; but as regards all income of the particular nature referred to, the subject is only taxed at 4s. per £. The subject thus

benefits to the extent of 2½ per cent. upon the amount set to tax after deduction of a sixth as earned income. Perhaps the subject should not have this beneficent action on the part of a Government department exposed!

The position of the Inland Revenue might be appreciated if the law as expounded in *Brown* [1921] 2 A.C. 222, and *Whelan* [1926] A.C. 293, still operated. By these decisions, income, whether dividend or other profit, either escaped tax for the first year of its receipt if there were none of the same description in the previous year or if the source of such income did not exist in the assessing year. The effect of these judgments was, however, discounted by s. 22 of the Finance Act, 1926. There is now no sound reason whatever, it is submitted, for the Commissioners of Inland Revenue dislocating the assessments for Income tax and their collection in the manner under consideration. By adopting their peculiar procedure of assessing as for the year ending 5th April, 1930, based normally on the year's income prior thereto, the Inland Revenue must lose a very considerable sum. The department cannot be said in this instance to be "squeezing" the taxpayer. Business men do not understand this fantastic way of dealing with their income as returned by them. The particular income in question, although uncertain or non-recurring, is in its nature in no way different from other income received in the same tax year so far as the recipient is concerned. All such income was earned in that tax year and should therefore be assessed upon the complete return therefor as for the following assessing year. One can easily see that if the incidence of the tax had been lowered last year, instead of being increased, it would have been exasperating for taxpayers to find that more Income tax was being claimed from them upon "unexpected" income than upon their normal income of the year. The ridiculous principle of dealing with "a new source of income" in this way clamantly calls for rectification. In result, it irritates taxpayers who resent the suggestion which the procedure implies that they failed duly to return income as received, and it muddles Government accounts and accounting over two years for no adequate reason.

Landlord and Tenant Act, 1927.

THE WORKING OF THE ACT.

(By S. P. J. MERLIN, Barrister-at-Law.)

THE results of the working of the Landlord and Tenant Act, 1927, during the last two years, have been somewhat unexpected by those interested in its administration.

It has undoubtedly improved the position of the tenant of business premises in a large proportion of cases. But it has not enabled outgoing tenants to recover much monetary compensation, under s. 4, for the loss of their goodwill. The pruning to which the commercial value of the goodwill of a tenant is subjected to by the provisoes in that section is very drastic and very often fatal to what appears to be a meritorious claim until this pruning is applied to it. And with regard to tenants' claims to be entitled to make "improvements" to their holdings under ss. 1, 2, and 3, there have been surprisingly few of them, as yet, in comparison with the claims in respect of goodwill or "new leases."

It is in relation to claims to new leases under s. 5 that the Act has justified its existence. Notwithstanding the numerous defences open to a landlord, as replies to a claim to a new lease, there have been a great number of successful claims asserted to this relief even after a fully sustained contest. The numbers of the reported cases under the Act are no criterion whatsoever as to the number of notices of claims for new leases which have been formally served. Probably only about one in fifty of such claims ever come to be fought, the others are settled by negotiation and with the result in the majority of cases that the tenants are granted new leases on fair terms as to rent and otherwise. It is as a weapon of negotiation that the Act has been of great value to a tenant who might otherwise have been forced to pay an unjust rental for a fresh lease of the premises to which his industry and outlay of capital and skill had attached a valuable goodwill.

There are a number of novel principles and moot questions contained in the Act which have not as yet come up to the appeal courts for an authoritative decision. However, some of them have been partially considered, and of these questions it is probable that the most important is the one as to the position of "licensed premises" under the Act.

Licensed Premises: How far are they within the Act?

It will be remembered that in one of the provisoes to s. 4 of the Act it is expressly enacted that "In the case of *licensed premises* the sum payable as compensation for goodwill under this section shall not include any addition to the value of the premises attributable to the fact that the premises are licensed premises."

In the recent case of *Stumbles* v. *Whitley* [1930] A.C. 544, which eventually went to the House of Lords, a new lease was secured by a tenant of licensed premises under s. 5 of the Act. There, however, a goodwill (over and above the goodwill attributable to the fact that the premises were licensed premises) had been created and super-imposed by the tenant of a fishing hotel, in connexion with his catering, fishing, garaging, and boat-hire businesses, carried on in the same premises, but alongside and independent of his business of a licensed victualler. The case was contested throughout, but the defence that the tenant was not entitled to a new lease on account of the limited exemption, as to licensed premises, in s. 4 (1) (c), above set out, was not pressed by the landlord, presumably, because it was recognised, as the evidence showed, that a large part of the business carried on at the premises was independent of and severable from that other part of the business which was solely attributable to the fact that the premises were licensed premises. This was consistent with the decision in the Irish case of *M'Glade* v. *Hutchinson*, 43 I.L.T.R. 238, where it was decided that, although the lessor owned the licence, the tenant might nevertheless acquire a goodwill independent of the value of the licence.

On the other hand, in the case of *Kruse* v. *Benskins Brewery Ltd.*, the tenant of licensed premises failed, after a full hearing and discussion of the position, to establish his claim for a new lease, the decision proceeding on the ground that in the case under consideration the evidence indicated that the whole of the goodwill attached to the premises in question was attributable to the fact that the premises were licensed premises.

The case was referred to Sir WILLIS CHITTY, K.C., one of the referees under the Act, and there are dicta in his report, and in the considered judgment of His Honour Judge CRAWFORD, which indicate that it is quite possible that cases may arise where tenants of ordinary licensed premises will be able to show that they have attached goodwill to their premises, over and above the goodwill which is traceable exclusively to the fact that the premises are licensed. This case of *Kruse* v. *Benskins Ltd.* is also worthy of note in that the defendants were permitted, possibly under s. 11 of the Act, to file a counter-claim for damages for breach of covenant to repair (in reply to the plaintiff's claim for a new lease) in which they claimed over £100, and recovered £80.

Are Statutory Tenants within the Act?

This is another moot question upon which the numerous commentators on the Act are very divided and undecided.

In approaching the question, the first thing to consider is the definition of a "tenant" in s. 25 (1) of the Act, which says that: "The expression 'tenant' means any person entitled in possession to the holding under any contract

of tenancy, whether the interest of such tenant was acquired by original contract, assignment, operation of law, or otherwise."

On the one side it is argued that it appears clear from this definition that before a tenant is eligible at all to claim compensation for a new lease he must be entitled to possession of the premises under a "contract of tenancy." These words, it is thought, govern the words which come later in the definition, and which if they stood alone, and without the limitation placed upon them by the words "contract of tenancy" would have been (by virtue of the words "or otherwise") wide enough to include statutory tenants. But having regard to the essential requirement that a "tenant" must be a person holding under a "contract of tenancy," it is contended that a "statutory tenant," as opposed to a "contractual tenant," is not entitled to claim the remedies given to "tenants" under the Act, as a statutory tenant has no *contract* of tenancy.

On the other hand some writers consider that the said definition of a "tenant" is wide enough to include statutory tenants. There is no authoritative judicial decision available as yet on this point, and the only matter which is clear is that tenants who hold leases of small business premises, with *dwelling-houses* attached to them (and which are within the Rent Restriction Acts), are also within the Landlord and Tenant Act, 1927, provided they have not actually become "statutory tenants" of such premises.

(*To be continued.*)

Company Law and Practice.

LIX.

SURPLUS ASSETS IN LIQUIDATION.

When a company is being wound up, the balance, which is left after payment of the debts of the company and of the costs of the liquidation, must be distributed among the contributories strictly in accordance with the provisions contained in the memorandum and articles of association of the company.

Preference shares are sometimes only preferential as to dividend, and sometimes they are given a preference as to capital also in a winding up; if they are not expressed to be preferential as to capital also, they rank equally with the ordinary shares up to the amount paid up on them. If all shares which rank equally are of the same nominal value and fully paid up, or the same amount is paid on them all, no difficulty arises as to distribution up to the nominal amount, or the amount paid up, for the distribution is made rateably according to the shares which each member holds. If, however, the same amount is not paid up on all the shares, those who have paid more must (subject to any special provisions to the contrary) first receive the excess which they have paid over and above the amount paid by the others, and such balance as there is will then be distributed rateably.

But where all members have received the capital paid up by them and there is still a surplus, questions of some difficulty arise with regard to the distribution of this surplus; it not being always easy to say whether the preference shareholders must be satisfied with the return of their capital, or whether they have any right to share in the surplus along with the ordinary shareholders.

In each case it is purely a question of construction of the memorandum and articles of the company under consideration, but the decisions show a distinct diversity of opinion among the judges who have had to decide the point.

We may refer first of all to the decision of Swinfen Eady, J., in *Re Espuela Land and Cattle Co.* [1909] 2 Ch. 187. In that case the learned judge said that, in the absence of any provision to the contrary, the rights of the shareholders are equal; the constitution of the company there provided that (after a cumulative preferential dividend) the preference shares were to have a preferential right to be repaid the amount paid up thereon and interest out of the assets of the company if the company were to be wound up. It was argued that a clause in the memorandum (which was also to be found in the articles) to the effect that the capital might be increased by ordinary shares, or by shares having preference over the ordinary but not over the preference shares, or so as to interfere or compete with them, indicated that the preference shares were only to get back their capital. Swinfen Eady, J., however, rejected this argument, and determined that surplus assets left after paying back the capital were to be distributed rateably among the preference and ordinary shares in accordance with their nominal amounts.

The next case is that of *Re National Telephone Co.* [1914] 1 Ch. 755, where Sargant, J., came to a conclusion which would seem to be somewhat different from that of Swinfen Eady, J., in the previous case. It is unnecessary for the purposes of this article to deal with the facts of this case, it being sufficient to quote from the judgment of Sargant, J., at p. 774, a short passage which shows his view on the question of principle: "It appears to me that the weight of authority is in favour of the view that, either with regard to dividend or with regard to the rights in a winding up, the express gift or attachment of preferential rights to preference shares, on their creation, is, *prima facie*, a definition of the whole of their rights in that respect, and negatives any further or other right to which, but for the specified rights, they would have been entitled."

In *Re Fraser and Chalmers* [1919] 2 Ch. 114, a somewhat similar case, Astbury, J., in a considered judgment, refused to adopt the view of Sargant, J., set out above, and followed the *Espuela Case*, in ordering the surplus assets to be rateably distributed between the ordinary and preference shareholders. Again, in *Anglo-French Music Co. Ltd.* v. *Nicoll*, Eve, J., followed the previous decisions of Astbury, J., and Swinfen Eady, J., and refused to follow the *National Telephone Case*.

The last of these decisions is one which shows clearly what a fine line of distinction there is to be drawn in cases of this nature; it is reported under the name of *Collaroy Co. Ltd.* v. *Giffard* [1928] Ch. 144; and here Astbury, J., distinguished his previous decision in *Re Fraser and Chalmers, supra*, and held that the memorandum and articles did there exhaustively set out the rights of the preference shareholders, in referring to the preferential dividend and to repayment of the capital paid up on them, on the ground, or partially on the ground, that the definite article "the" was prefixed to the word "right" in the memorandum and articles when dealing with such rights as were conferred thereby on the holders of the preference shares.

It is usual at the present time to be more specific when dealing with these questions in the articles, and with good reason, as will be seen from a perusal of the above – the phrase "but no further right to participate in profits or assets" (or some similar words) are now almost invariably added to the clause dealing with the preference shares where the surplus is to belong to the ordinary shareholders; or, if the surplus is to be distributed among all the shareholders, some definite method of distribution is set out so as to avoid the possibility of any misconception.

(*To be continued.*)

THE JUDICIAL COMMITTEE.

The Judicial Committee of the Privy Council will resume their sittings on Tuesday next, 13th January, with a list of thirty-four appeals, the same number as last year. There are twenty-five appeals from India, two each from Ceylon and the Straits Settlements, and one each from Australia, New Zealand, Nigeria, East Africa, and Palestine. Eighteen judgments await delivery.

A Conveyancer's Diary

The Burden of Repair of Property held on Trust for Sale.

Last week I discussed the question of improvements made by a tenant for life to settled land, especially with reference to the retrospective operation of the S.L.A., enabling improvements made before the Act, and not then chargeable to capital, being paid for out of capital money.

This week I propose to refer to repairs to property held on trust for sale.

The two questions are linked together to some extent, because it will be remembered that under s. 28 (1) of the L.P.A., trustees for sale have in relation to land all the powers of a tenant for life and the trustees of the settlement under the S.L.A., consequently it is necessary to look at the relevant sections of the S.L.A. as well as at the provisions of the L.P.A.

The point upon which there has been some uncertainty owing to some difference of judicial opinion or, at any rate, some apparent conflict, is whether the discretion of the court regarding the incidence of repairs to land held upon trust for sale has been taken away by the 1925 legislation, or whether that discretion still remains and may be exercised in a proper case.

First, with regard to the law as it existed before 1926.

In *Re Hotchkys* (1886), 32 Ch. D. 408, it was laid down that the court had a discretion in each case to direct how repairs should be borne as between capital and income. Cotton, L.J., said (p. 418): "According to my view as I have already expressed it, the burden of repairing, if it is necessary and proper, ought to be thrown upon the estate in such a way as not to throw it entirely upon the tenant for life or upon the remainderman," and Lindley, L.J., in concurring in that view, said that where the authority of the court was sought to make repairs "that authority will be given on equitable terms as to the mode of paying the expenses."

Again, in *Re Farnham* [1904] 2 Ch. 561, Cozens-Hardy, L.J., said, that in such a case it would be "open to the court to investigate the nature of the expenditure and to say what was really fair, just and equitable as between the various beneficiaries, in the mode of distributing the burden between them."

As I have said the question has arisen whether the court still has such a discretion or is bound only to regard the provisions of the L.P.A. and the S.L.A.

I have already mentioned s. 28 (1) of the L.P.A., which confers on trustees for sale the powers given to a tenant for life and the trustees of the settlement by the S.L.A. The material portions of that Act are contained in Part IV and the Third Schedule, to which a reference was made last week. It will be remembered that the Third Schedule is divided into three parts, Part I comprising improvements the costs of which are not liable to be repaid by instalments out of income; Part II comprising improvements the costs of which may be required to be so repaid, and Part III comprising improvements, the cost of which must be so repaid.

Another important provision which has given rise to some difficulty in this connection is sub-s. (2) of s. 28 of the L.P.A. That sub-section enacts:—

> "Subject to any direction to the contrary in the disposition on trust for sale or in the settlement of the proceeds of sale, the net rents and profits of the land until sale, after keeping down costs of repairs and insurance and other outgoings, shall be paid or applied, except so far as any part thereof may be liable to be set aside as capital money under the S.L.A. 1925, in like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested."

The point taken with regard to this sub-section is that it has the effect of throwing the whole burden of repairs upon income.

Then there is s. 102 of the S.L.A. That is a lengthy section which confers very full powers of management, improvement, etc., upon trustees, including power (sub-s. (2) (*b*)), "to erect, pull down, rebuild and repair houses and other buildings and erections"; and by sub-s. (3) the trustees are empowered to pay out of the income of the land the expenses incurred in the management or the exercise of any of the powers conferred by the section.

That section applies in terms only to land of an infant, but, as we shall see, it has been held to be applied by virtue of s. 28 (1) of the L.P.A. to the case of all trusts for sale, and it has been said that there again the costs of repairs of every kind are to be borne out of income.

Turning now to some of the cases decided since 1925, the first is *Re Gray, Public Trustee* v. *Gray* [1927] 1 Ch. 242.

In that case property consisting of a large block of flats was held upon trust for sale. The property had been allowed to fall into disrepair with the result that a considerable sum of money was required to defray the expenses of substantial repairs, part of which were structural.

It was held (1) that those repairs were repairs authorised by s. 102 (2) (*b*) of the S.L.A., 1925, and the expenses thereof were properly incurred by the trustees and payable out of the income of the property; and (2) that, even if these statutory powers were only exercisable during a minority, the expenses incurred would, by virtue of sub-s. (2) of s. 28 of the L.P.A., 1925, nevertheless still be payable out of income as the expression "repairs" in that sub-section bears the same wide meaning as the word "repair" in s. 102 (2) (*b*) of the S.L.A., 1925.

In the course of his judgment Clauson, J. expressed the view that the position was changed by the new statutory provisions. The trustee, having been given statutory powers, should exercise them. "Having a statutory power he is in a wholly different position from that of the trustee whom the court sought to assist in *Re Hotchkys*. There being then no statutory power, the court had to apply general equitable principles. I see no reason why the court, having the statute before it, should fall back upon those principles. I see no reason why the court should not leave the trustee to deal with the matter under the statutory power given to him by the Legislature, and, under those circumstances, it appears to me the right course for the trustee to take is to do the repairs and to use the statutory power of paying for those repairs out of income."

Of course, if that were the last word on the subject, the position would be an alarming one from the point of view of a person having a life interest. The trustees might expend the entire income on structural repairs and improvements, even to the extent of building or pulling down and rebuilding houses and there would be no discretion in the court to direct any part of the expense to be borne out of capital.

The matter has not yet been before the Court of Appeal, but there have been several cases in the court of first instance where the opinion expressed by Clauson, J., has not been followed, and when the court has exercised its discretion by directing an equitable division of the burden of repairs of a substantial character.

It may be said with regard to *Re Gray* that it may well be that the repairs in that case were such as the court would in the exercise of its discretion have directed to be paid out of income, notwithstanding that some of them appear to have been of a structural nature. At any rate, the judgment went further than was necessary for the decision of the case. In fact, that was recognised by the learned judge himself in *Re Conquest* (1929), W.N. 141, in which his lordship said that the view expressed by him in *Re Gray* was intended to be no more than a dictum. It seems, however, to have been his carefully weighed opinion at the time.

It may be that we have not yet had a final judicial ruling on this subject, and I think that it will be worth while examining the later authorities, but I must defer that to another week.

Our County Court Letter.

REINSTATEMENT OF DEFUNCT COMPANIES.

In the recent case of *In re The Hygienic Bottle Co. Ltd.* at Sheffield County Court, the company applied for the restoration of its name to the register in accordance with the Companies Act, 1929, s. 295 (6). The company had been formed with the object, *inter alia*, of making a patent bottle for milk, but default was made in the filing of annual returns for the years 1928-29, and the company's name had therefore been removed from the register. An opportunity had since arisen of selling the patent, but the purchaser could not acquire the legal estate, as no assignment was possible unless and until the company was reinstated. His Honour Judge Greene, K.C., held that it was just that the company be restored to the register, and an order was accordingly made as asked.

The position on the subsequent appreciation in value of assets had previously been considered in *In re Home and Colonial Insurance Co. Ltd.* (1928), 44 T.L.R. 718. The application was made under the then equivalent of s. 294 (1) of the above Act for an order declaring the dissolution to have been void. A cause of action had accrued to the company by reason of a decision in another case, and it was therefore desired to commence proceedings as a means of producing assets. Mr. Justice Maugham observed that, as the undistributed assets passed on dissolution to the Crown as *bona vacantia*, any order reviving the company had the effect of divesting the Crown of those assets. In the absence, however, of any claim by the Attorney-General, the order was duly made.

The terms which the court may impose, under the first-named section, *supra*, were considered in *In re Langlaagte Proprietary Co. Ltd.* (1912), 28 T.L.R. 529. All the shares had there become vested in one shareholder, who (having gone abroad) had applied for the company's name to be removed from the register, which had accordingly been done. Subsequently, however, a petition for the restoration of the company's name to the register was presented by the holder of 1,000 fully-paid shares, who (having acquired them from the former sole shareholder) was desirous of making a title on realising the assets. Mr. Justice Swinfen Eady (as he then was) elicited that the petition was in substance that of the former sole shareholder, who was outside the jurisdiction of the court. The solicitors undertook, however, that a petition should forthwith be presented to wind up the company, and an order was therefore made for the restoration of its name to the register.

On the other hand, there is no jurisdiction to impose a penalty upon the company, as a condition of its reinstatement, as shown by *In re Brown Bayley's Steel Works Ltd.* (1905), 21 L.T.R. 374. The company (like that in the first-named case, *supra*) had been struck off the register for failing to make returns, the effect being that no corporation existed thereafter, and its officers were personally liable for the engagements made as its agents. The present Lord Wrenbury observed that an order to restore the company's name to the register would not relieve them of personal liability, for which an order under another section was necessary. The learned judge declined to relieve the directors, but, as a complete refusal of the application would have caused injustice to many persons, an order was made for the restoration of the company's name—on its making the necessary returns and paying the costs of the Board of Trade. It is to be noted that, in the last-named case, the business of the company was still prospering, so that the directors' liabilities were probably nil.

The Right Hon. Sir Isaac Alfred Isaacs, P.C., K.C.M.G., Chief Justice of Australia, will be sworn in as Governor-General on 22nd January. A High Court judge will officiate at the ceremony, which will take place in the Victoria Legislative Council Chamber in Melbourne.

Books Received.

A Guide to Land Registry Practice. John J. Wontner. 1930. Second Edition. Large crown 8vo. pp. vii and (with Index) 109. London: The Solicitors' Law Stationery Society, 22, Chancery-lane, W.C.2; 27 & 28 Walbrook, E.C.4; 6, Victoria-street, S.W.1; 49, Bedford-row, W.C.1; 15, Hanover-street, W.1. Liverpool: 19 & 21, North John-street. Glasgow: 66, St. Vincent-street. 6s. net.

Doctor Barnardo: Physician, Pioneer, Prophet. Child Life Yesterday and To-day. By J. Wesley Bready, Ph.D. (London), B.D. (Toronto), M.A. (Columbia), B.D. (Union N.Y.). 1930. Demy 8vo. 271 (with Index). London: George Allen & Unwin, Ltd. 7s. 6d. net.

A Text Book of Medical Jurisprudence and Toxicology. John Glaister, M.D. (Glas.), D.P.H. (Cantab.), F.R.S.E., Professor of Forensic Medicine in the University of Glasgow, etc., etc., in collaboration with John Glaister, junior, M.B., C.H.B. (Glas.), M.D. (Hons.) (Glas.), D.Sc. (Glas.), Barrister-at-Law. Fifth Edition. 1931. With 130 Illustrations and Seven Plates. Demy 8vo. pp. xv and (with Index and Legal Index) 954. Edinburgh: E. & S. Livingstone. 30s. net.

A Practitioner's and Student's Digest of the Law relating to Bankruptcy and Deeds of Arrangement. Neville Hobson and R. Withers Payne, LL.B., solicitors (Honours). With Chronological Table of Procedure and Accountancy Notes by H. R. Matthews, F.C.R.A., and G. A. Robins, A.C.A. 1931. Fourth Edition. Crown 8vo. pp. (with Table of Cases and Index) 84. London: The Solicitors' Law Stationery Society Limited, 22, Chancery-lane, W.C.2; and Branches. 4s. net.

Jangle-Jingles. Lyrics of a Lone Lawyer's Leisure. Written and composed by Frank White. In three Series. (1) Songs for and about Children; (2) Songs of The Services; (3) Miscellaneous, including some in a lighter vein. Crown 4to. London: The Solicitors' Law Stationery Society Limited, 15, Hanover-street, Regent-street, W.1. 5s. 6d. each, post free.

The Conduct and Procedure at Public and Company Meetings (with the changes in the Law made by the Companies Act, 1929). 1931. Twelfth (revised) Edition. Albert Crew, Barrister-at-law. Large crown 8vo. pp. xxii and (with Index) 370. London: Jordan & Sons Limited. 5s. net.

Manitoba Bar News. Vol. 3. No. 4. December, 1930. Manitoba Bar Association, Winnipeg.

Inland Law Review (formerly *Southern Law Quarterly*). Vol. V. No. 1. December, 1930. New Orleans (U.S.A.) Inland University College of Law. One dollar.

Principles of the Law of Partnership. By Sir Arthur Underhill, M.A., LL.D. Fourth Edition. By Milner Holland, B.C.L., M.A., Barrister-at-law. 1931. Large crown 8vo. pp. xxvii, 180 and (Index) 27. London: Butterworth & Co. (Publishers) Limited. 10s. 6d. net.

Ministry of Health. Shewing number of Persons in receipt of Poor Relief in England and Wales in the Quarter ending in September, 1930. H.M. Stationery Office. 4d. net.

The Secretary's Manual on the Law and Practice of Joint Stock Companies, with Forms and Precedents. His Honour Judge Haydon, M.A., K.C., Sir Gilbert Garnsey, K.B.E., F.C.A. Twenty-first Edition. 1931. Demy 8vo. pp. xxxi. London: Jordan & Sons Limited. 7s. 6d. net.

Fisher and Lightwood's Law of Mortgage. Seventh Edition. Revised and largely re-written by John M. Lightwood, M.A., Barrister-at-law. 1931. Royal 8vo. pp. cexii, 820 and (Index) 106. London: Butterworth & Co. (Publishers) Limited. Thick edition. 70s. net. Thin 72s. 6d. net.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Increase of Rent, &c. Acts—Increase of Rates.

Q. 2104. We act for a landlord of controlled premises, who has had the usual demand for general district rates, which rates have been increased from the rates previously paid during the past year or half-year. The landlord wishes to put the burden of the increased rates on the tenant, a widow, who paid rates in 1917. The tenant became a widow in 1922 and was excused payment of the rate as she was receiving poor relief. In 1925 she did not receive relief as she became entitled to —and received—the widows' pension and consequently, as she was therefore liable for the poor rate, she became liable. The point we raised is, as the landlord has had to pay the increased rates (general and water rates) could he transfer the burden of the increased rates to the tenant under s. 2, sub-s. (3) of the Rent Act, 1920, *without* giving the statutory notice under s. 3, sub-s. (2), in view of the proviso under that sub-section (s. 3, sub-s. (3)), which reads: "Provided that for the purposes of this section the rent shall not be deemed to be increased where the liability for rates is transferred from the landlord to the tenant etc." Does the word "rates" referred to in s. 2, sub-s.(3), mean general district rates, or does it mean such special rates such as drainage, sewerage, etc? We advised our client to give the usual written notice of increase, but he refuses to do this, and contends that he need not do so under s. 2, sub-s. (3). We shall be glad to hear whether you think the landlord is correct and need not give the notice. If he is incorrect, then we should like to know what s. 2, sub-s. (3) is intended for.

A. If the house, as it seems from the question, was let under the terms that the tenant paid the rates, the landlord's obvious course is to make the tenant still pay them, and tell the rating authority to serve the demand on the tenant, unless by reason of the house having now to be "compounded for," or by reason of agreement between the landlord and the rating authority, the landlord has now become legally liable to pay. If he has become legally liable to pay rates which were previously chargeable to the tenant, he can increase the rent by a corresponding amount without resorting to the statutory notice. This, at any rate, appears to be the meaning, not of the proviso quoted (which applies to the converse case), but of the preceding words of sub-s. (3), though we do not know of any reported decision on the question.

Dishonour of Bankrupt's Cheque.

Q. 2105. A, a successful dealer and agent with a substantial bank balance, has his cheque, owing to carelessness on the part of the bank, dishonoured, whereby his agency is seriously affected. It is now discovered that A is an undischarged bankrupt with heavy undischarged liabilities. Can A succeed against the bank for dishonouring the cheque, and on what grounds?

A. A can succeed against the bank for negligence in dishonouring the cheque, on the grounds that (*a*) the adverse effect on his agency will interrupt him in his success as a dealer; (*b*) this success would have enabled him to pay off some or all of his liabilities and thus apply for his discharge. It is not stated that A was committing the offence of obtaining credit without disclosing that he was an undischarged bankrupt, as he may have traded on a cash basis. The bank may, of course, have evidence, from his record and character, to rebut any allegation that A intended to rehabilitate himself by applying for his discharge, but this will only go in mitigation of damage. The mere fact of being an undischarged bankrupt is no bar to A's success in an action against the bank, but any damages recovered would be claimed by his trustee, and the bankruptcy court would have to decide how much A may be allowed to retain.

Trustees—Income Accounts—Costs.

Q. 2106. By a marriage settlement made forty years ago, certain sums amounting to over £2,000 were settled by the wife. The wife has now died without issue, her husband having predeceased her, and she has by her will exercised a general power of appointment over the funds given to her by the settlement. One of the trustees of the settlement is a solicitor, and a power to charge is given by the settlement. For several years the income from the funds has been paid direct to the banking account of the settlor, but a cash account has been kept by the firm (of which the trustee-solicitor is a member), and every time a dividend has been received the voucher has been sent to the solicitors concerned and acknowledged by them, and the cash book entered up with receipts and payments. No charge has been made. Are not the solicitors concerned now entitled to some costs in connexion with the keeping of these accounts and correspondence, before handing over the funds to the executors of the will? Can you suggest an amount?

A. The Council of The Law Society (Opinion of 14th July, 1904, para. 1038, in the 1923 edition of "Law Practice and Usage, etc.") expressed the opinion that work of this nature was non-professional work, and should be charged for on a *quantum meruit* basis, and did not consider 10s. an hour an unreasonable charge for keeping the trustees' books. Our subscribers should refer to this opinion, which was given in a case similar to, but not identical with, that under consideration, and does not touch the question of correspondence. We are disposed to suggest a small percentage fee on the annual income to cover all work done (say 2½ per cent.). As in this case the income was received by the life tenant direct through her bankers, we find it a little difficult to see the real use of the income account.

Duty Free Legacies and Devises—Abatement.

Q. 2107. We have a case where a testatrix by her will gave and bequeathed various pecuniary legacies, certain specific legacies of stocks and shares, and also specifically devised a freehold house to relatives. She directed that *all legacies and the devise* should be free of legacy and succession duty. The residue was given to three sisters. In administering the estate, are we correct, as there is insufficient residue, in resorting to the pecuniary legacies for payment of legacy duty and succession duty on the specific legacies, and causing them to abate rateably? Must the pecuniary legacies in fact be exhausted before the specific legacies can be touched?

A. Where a bequest or devise is free of legacy or succession duty the gift of the duty is considered to be in itself a legacy (see *Farrer* v. *St. Catherine's College* (1873), L.R. 19, Eq. 19, and *Re Turnbull: Skipper* v. *Wade* [1905] 1 Ch. 726). The legacy duty on the specific legacies and the succession duty on the realty and the pecuniary legacies plus the duty thereon must abate proportionately. It does not appear from the question that the devise of realty was also free of estate duty. If it was this is an additional legacy.

Notes of Cases.

High Court—Chancery Division.

Simons *v.* Associated Furnishers, Limited.

Clauson, J. 2nd December, 1930.

LEASE—NOTICE TO DETERMINE—BREACH OF COVENANT AT DATE OF NOTICE—REMEDIED AT EXPIRATION OF NOTICE—VALIDITY OF NOTICE.

By a lease dated 31st December, 1925, the plaintiff demised certain premises to the defendants for about seventeen years at a yearly rent. The lease contained the following proviso: "That if the lessees shall desire to determine the present demise at the expiration of the first five or ten years of the said term and shall give to the lessor six calendar months' previous notice in writing of such desire and shall up to the time of such determination pay the rent and perform and observe the covenants and conditions on their part hereinbefore contained then immediately on the expiration of such five or ten years as the case may be the present demise and everything therein contained shall cease and be void but without prejudice to the remedies of either party against the other in respect of any antecedent breach of covenant." On 17th August, 1929, the defendants gave to the plaintiff notice in writing to determine the lease on 28th February, 1930. The plaintiff refused to recognise the validity of the notice on the ground that at the date of the notice there were subsisting breaches of the covenants to repair, and he brought this action claiming a declaration that the lease was still subsisting. The judge, having held that on 28th February, 1930, the premises were in a sufficient state of repair, the question remained whether the notice was invalid by reason of the fact that at the date of the notice there were subsisting breaches of the covenants.

CLAUSON, J., said that upon the proper construction of the clause there was nothing to suggest that the requirements of the condition must have been satisfied at the moment when the notice was given. Cases had been cited in which judges had used language rather suggesting that it was material to ascertain the condition of things at the date of the notice, but in none of those cases did it matter, because the state of things in those cases at the expiration of the notice and at the date of the notice was the same, and the difficulty here present did not there arise, and it was admitted that none of those cases was binding in the present case. The conditions contained in the clause had been fulfilled, and the term of the lease had been effectually determined.

COUNSEL: *Spens*, K.C., and *H. S. G. Buckmaster*; *Vaisey*, K.C., and *Wilfrid Hunt*.

SOLICITORS: *Ernest A. Howell*; *Sharpe, Pritchard & Co.*, for *Harrison & Sons*, Leeds.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

W. G. Tarrant *v.* C. K. Roberts (H.M. Inspector of Taxes).

Rowlatt, J. 9th December, 1930.

REVENUE—INCOME TAX ON REPAID EXCESS PROFITS DUTY—FINANCE ACT, 1915, 5 & 6 GEO. 5, c. 62, s. 38 (3)—FINANCE ACT, 1921, 11 & 12 GEO. 5, c. 32, s. 36.

At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts, held on the 17th December, 1929, the appellant, W. G. Tarrant, appealed against an assessment made under the provisions of Sched. D of the Income Tax Acts in the estimated sum of £60,000 for the year ended the 5th April, 1923, in respect of repayment of excess profits duty. There was no dispute in the case with regard to figures, and it was agreed that if the decision of the Commissioners was right in principle the assessment should be reduced to £58,180. The appellant carried on a business as builder and contractor up to the financial year ended the 5th April, 1923, during which year he sold his business to a company. The profits of the business carried on by the appellant attracted liability to excess profits duty, and the duty payable for the accounting periods twelve months to 31st December, 1918, and twelve months to 31st December, 1919, was £52,683 and £4,387 respectively. Only £2,000 cash, however, was paid in respect of those sums, the remainder being allowed to stand over as an amount due to the Revenue. The deficiency in duty estimated in accordance with the provisions of s. 38 (3) of the Finance (No. 2) Act, 1915, in respect of the accounting period twelve months to the 31st December, 1920, was £49,366, while in addition further relief to the extent of £8,814 was admitted by the Revenue Authority under the provisions of s. 36 of the Finance Act, 1921, being an adjustment of excess profits duty over the aggregate period of the charge. Finally, after setting off the sums due to the Revenue Authorities and the sums due to be repaid by the Revenue Authorities, a balance of £3,110 cash was repaid to the appellant in January, 1923, this sum having been agreed between the parties. In arriving at the amount of the income tax assessments made under Sched. D upon the business of the appellant, both the sums of £52,683 and £4,387 had been allowed as deductions in computing the profits and gains of the relative years, although only £2,000 cash had been paid over to the authorities in respect of those two sums. The Special Commissioners dismissed the appeal and reduced the assessment to £58,180 for the financial year ended the 5th April 1923. The appellant now appealed.

ROWLATT, J., said that the case concerned the liability of the appellant to income tax upon a repayment of excess profits duty in the year in which the repayment was received. The question was whether he did receive any such repayment, and if he did, did he receive it in the year in question. The mere existence of a countervailing item did not amount to repayment, but in the present case the parties met and agreed that they should not go through the formality of exchanging cheques, but that one should be set against the other, and in his opinion, that was payment. There thus being a debt *de facto* due from the appellant, the setting off of the amount due for repayment of excess profits duty against that, is repayment in the strictest sense of the word and the Excess Profits Duty Act in 1923, and therefore it became in itself a subject-matter of tax for 1923. The appeal would be dismissed, with costs.

COUNSEL: *Konstam*, K.C., and *Michael E. Rowe*, for the appellant; *The Attorney-General* (Sir William Jowitt, K.C.), and *R. P. Hills*, for the Crown.

SOLICITORS: *Church, Adams & Co.*, *The Solicitor of Inland Revenue*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Obituary.

MR. A. V. W. HUNT.

Mr. Alfred Vivian Woodland Hunt, M.A., Assistant Solicitor to the Barrow Corporation, died quite suddenly on Sunday, the 21st December, from pneumonia, after a few days' illness, at the early age of twenty-six. The son of Canon Hunt, Rector of Kirby-Laythorpe (Lincs), a well-known antiquarian, he was admitted in 1929, taking up his appointment in the Town Clerk's Department at Barrow a little later.

MR. W. E. BURT.

Mr. W. Eaton Burt, solicitor, formerly of Bournemouth and Christchurch, where he was well known, died recently in a nursing home at Nelson, New Zealand, on Sunday, 21st December, at the age of seventy-five. Mr. Burt, who went to New Zealand about eighteen years ago to join his sons, never really recovered from the effects of an operation performed in

the month of October last. He was at one time a member of the Bournemouth Town Council and led the opposition to the river outfall scheme. He acted as Clerk to the Old Pokesdown Council and was director of and solicitor to the Carlton Hotel, solicitor to the Christchurch Billposting Company and also to the Christchurch Land Society.

MR. H. K. BLOOMER.

Mr. Howard K. Bloomer, solicitor, Grimsby, died suddenly on Thursday, the 25th December (Christmas Day). He had a heart attack on the golf course after playing only two holes, was immediately attended by Dr. Best, but died soon after being carried to his car. Mr. Bloomer was admitted in 1887 and went from Grimsby to Worcester in the year 1900.

MR. R. K. CALVERT.

Mr. Rhodes Kennedy Calvert, solicitor, Leeds, died recently at his residence in Hollin Lane at the age of seventy-three. He was admitted in 1880, was Spanish Vice-Consul for the City, and was a member of The Law Society.

MR. J. C. HUGHES.

Mr. John Charles Hughes, solicitor, Barmouth, passed away suddenly on Saturday, the 20th December, at the age of seventy-six. After having returned home from business, he suddenly collapsed and died. Mr. Hughes had been Clerk to the Justices for the Barmouth Division for fifty-two years, to the Justices for the Dolgelley Division for forty years, and Registrar of the Dolgelley County Court for thirty years. He was a prominent Freemason.

Mr. H. C. SQUIRES.

Mr. H. C. Squires, solicitor, formerly of 11, Peas Hill Cambridge, died on the 12th December last, at the residence of his son, Dr. Squires, at Wantage. Mr. Squires at one time practised in the old Clement's Inn, subsequently for many years at 12, Bennet-street, and 11, Peas Hill, Cambridge. He retired nine years ago, though he kept in close touch with his practice down to 1927. He graduated at Downing College, Cambridge, and throughout took a keen interest in his college. He was an active member of the University Musical Society, was well known on the river, and was also one of the oldest members of the Cambridge Conservative Club, at one time taking an active part in political work.

Correspondence.

Points in Practice.

Sir,—With reference to Question No. 2078 and your answer in THE SOLICITORS' JOURNAL of 6th December, 1930, we would like to inform you of our own experience with regard to stamping a deed providing for payment of a weekly sum of £1 for the life of a lady.

This weekly sum was dependent solely upon the beneficiary continuing to live, and the Inland Revenue authorities claimed stamp duty on the annual sum payable, stating that the claim was in accordance with the decision of the Commissioners of Inland Revenue as to the mode of charging duty when the payment depends solely on life. They stated that the terms of this decision were published in "The Law Society's Gazette" for June, 1929.

In our arguments that the duty should be charged on the weekly sum we quoted the case of *Jackson* v. *The Commissioners of Inland Revenue* (1902) 50 W.R. 666, which was a case where a husband in a separation agreement undertook that so long as his wife observed the stipulations in the agreement she should receive during her life a clear weekly sum of £1, and it was there held that the stamp duty was chargeable on the amount of the weekly sum.

The Controller of Stamps purported to distinguish this case from our case by saying that such an assessment (that is to say, on the annual sum where no annual sum as mentioned was payable but only a weekly sum) would not ordinarily be made on a separation agreement such as in the *Jackson Case*, since in such cases payment does not usually depend solely on life.

We refused to pay duty on the annual sum and prepared a fresh deed providing for payment of a weekly sum so long as the annuitant, who was an old lady, remained unmarried, and we had no difficulty in getting this stamped with *ad valorem* duty on the weekly sum.

We venture to express the opinion that the Commissioners have no right to entirely ignore, as they appear to do, the case of *Jackson* v. *The Commissioners*, quoted above.

We should be glad to know your views on this matter in the light of our experience.

Seaford, Sussex. BARWELL & PHILCOX.
29th December, 1930.

[I am much obliged for the reference to the decision of the Board of Inland Revenue, which I confess had escaped my notice. At the same time, I think the Board were wrong in treating *weekly* payments in the same way as quarterly payments were treated in *Lewis* v. *Com. of I.R.* [1898] 2 Q.B. 290. It was there held that a deed securing four quarterly payments each year for life was the same for stamp duty purposes as a deed securing a yearly payment of four times the quarterly amount. There is, however, no aliquot number of weeks which makes a year; £3 a week is not £156 a year, and if the document is drawn for the payment of £3 a week on (every), say, Monday during A's life without apportionment, there is no security for an annual sum at all, as, if A died on, say, Sunday, his personal representatives would not be entitled to anything for the last six days of A's life.—YOUR CONTRIBUTOR.]

Ejectment of Unmarried Couple.

Sir,—With respect to the answer to *Q.* 2095, Vol. 74, p. 861, surely *Upfill* v. *Wright* [1911] 1 K.B. 506, is authority that a tenancy agreement by a man for the purpose of maintaining a kept woman on the premises is unenforceable on his part.

31st December, 1930. A. F.

Parliamentary News.

Progress of Bills.

House of Lords.

British Museum and National Gallery (Overseas Loans) Bill.
Second Reading Debate adjourned. [16th December.
Pharmacy and Poisons Bill.
Read the First Time. [17th December.
Unemployment Insurance Bill.
Royal Assent. [19th December.
Expiring Laws Continuance Bill.
Royal Assent. [19th December.
National Health Insurance (Prolongation of Insurance) Bill.
Royal Assent. [19th December.
Consolidated Fund (No. 1) Bill.
Royal Assent. [19th December.

House of Commons.

Agricultural Land (Utilisation) Bill.
Reported with Amendments from Standing Committee B. [17th December.
Education (School Attendance) Bill.
As amended, considered. [18th December.
Trade Disputes and Trade Unions (Amendment) Bill.
Read the First Time. [18th December.
Agricultural Marketing Bill.
Read the First Time. [18th December.
Education of Scotland Bill.
Read the First Time. [18th December.
Export of Horses Bill.
Read the First Time. [18th December.
Representation of the People Bill.
Read the First Time. [19th December.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE	EMERGENCY ROTA	APPEAL COURT No. I.	GROUP I. Mr. JUSTICE EVE. Witness. Part I.	GROUP I. Mr. JUSTICE MAUGHAM. Non-Witness
M'nd'y Jan. 12	Mr. Hicks Beach	Mr. Ritchie	Mr. *Hicks Beach	Mr. More
Tuesday .. 13	Blaker	Andrews	Andrews	Hicks Beach
Wednesday 14	More	Jolly	*More	Andrews
Thursday . 15	Ritchie	Hicks Beach	Hicks Beach	More
Friday 16	Andrews	Blaker	*Andrews	Hicks Beach
Saturday .. 17	Jolly	More	More	Andrews

	GROUP I. Mr. JUSTICE BENNETT. Witness. Part II.	Mr. JUSTICE CLAUSON. Non-Witness.	GROUP II. Mr. JUSTICE LUXMOORE. Witness. Part II.	Mr. JUSTICE FARWELL. Witness. Part I.
M'nd'y Jan. 12	Mr. *Andrews	Mr. Jolly	Mr. *Blaker	Mr. Ritchie
Tuesday .. 13	*More	Ritchie	*Jolly	*Blaker
Wednesday 14	*Hicks Beach	Blaker	*Ritchie	Jolly
Thursday . 15	Andrews	Jolly	Blaker	*Ritchie
Friday 16	More	Ritchie	*Jolly	Blaker
Saturday .. 17	Hicks Beach	Blaker	Ritchie	Jolly

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

HILARY SITTINGS, 1931.

COURT OF APPEAL.

IN APPEAL COURT NO. I.

Monday, 12th January.—Exparte Applications, Original Motions, Interlocutory Appeals from the Chancery and Probate and Divorce Divisions, and if necessary, Chancery Final Appeals.

Tuesday, 13th January.—Chancery Final Appeals until further notice.

IN APPEAL COURT NO. II.

Monday, 12th January.—Exparte Applications, Original Motions, Interlocutory Appeals from the King's Bench Division, and if necessary, King's Bench Final Appeals.

Tuesday, 13th January and until further notice.—Final Appeals from the King's Bench Division.

HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

GROUP I.—In Causes and Matters assigned to Mr. Justice EVE, Mr. Justice MAUGHAM and Mr. Justice BENNETT.

Before Mr. Justice EVE.

(The Witness List. Part I.)

(*Actions, the trial of which cannot reasonably be expected to exceed* 10 *hours.*)

Mondays .....Companies (Winding up) Business.
Tuesdays ..
Wednesdays
Thursdays ..
Fridays .. } The Witness List. Part I.

Before Mr. Justice MAUGHAM.

(The Non-Witness List.)

Mondays .....Chamber Summonses.
Tuesdays.....Mots, sht causes, pets, procedure sums, fur cons and adjd sums.
Wednesdays ..Adjd sums.
Thursdays ....Adjd sums.
Lancashire Business will be taken on Thursdays, the 22nd January 5th and 19th February, 5th and. 19th March.
Fridays.....Mots and adjd sums.

Before Mr. Justice BENNETT.

(The Witness List. Part II.)

Mr. Justice BENNETT will sit daily for the disposal of the List of longer Witness Actions.

GROUP II.—In Causes and Matters assigned to Mr. Justice CLAUSON Mr. Justice LUXMOORE and Mr. Justice FARWELL.

Before Mr. Justice CLAUSON.

(The Non-Witness List.)

Mondays .....Chamber Summonses.
Tuesdays .....Mots, sht causes, pets, procedure sums, fur cons and adjd sums.
Wednesdays ..Adjd sums.
Thursdays ....Adjd sums.
Fridays.....Mots and adjd sums.

Before Mr. Justice LUXMOORE.

(The Witness List. Part II.)

Mr. Justice LUXMOORE will sit daily for the disposal of longer Witness Actions.

Before Mr. Justice FARWELL.

(The Witness List. Part I.)

(*Actions, the trial of which cannot reasonably be expected to exceed* 10 *hours.*)

Mondays .....Bankruptcy Business.
Tuesdays ...
Wednesdays
Thursdays ..
Fridays..... } The Witness List. Part I
Bankruptcy Judgment Summonses will be taken on Mondays, the 2nd and 23rd February, and 16th March.
Bankruptcy Motions will be taken on Mondays, the 19th January, 9th February, 2nd and 23rd March.
A Divisional Court in Bankruptcy will sit on Mondays, 26th January, 16th February and 9th and 30th March.

THE COURT OF APPEAL.

HILARY SITTINGS, 1931.

A List of Appeals for hearing, entered up to Monday, December 22nd, 1930.

FROM THE CHANCERY DIVISION.

(Final List.)

For Judgment.

Re appln of Nicholson & Sons ld Re Opposition by Bass Ratcliffe and Gretton ld Re Trade Marks Acts 1905 to 1919

For Hearing.

Melhame v Administrator of German property
Ford & Walton ld v Greenall
F Reddaway & Co ld v Hartley
West & Son ld v Wyser
Spyer v Phillipson
Re Beresford Beresford v Dickinson
Arthur H Brandt & Co v Cork
Granger v South Wales Electrical Power Distribution Co
Re Partridge, dec Holyoake v Partridge (not before Feb. 9)
South London Racecourses ld v Wake
Hood v Blake

FROM THE COUNTY PALATINE COURT OF LANCASTER.

(Final List.)

Chapman v Mortimore

FROM THE PROBATE AND DIVORCE DIVISION.

(Final List.)

Divorce Woolf L v Woolf E B

FROM THE CHANCERY DIVISION.

(In Bankruptcy.)

Re a Debtor (No 954 of 1930) Expte The Debtor v The Petitioning Creditor and the Official Receiver appl. from a Receiving Order made by Mr Registrar Warmington on Dec 5, 1930

FROM THE CHANCERY AND PROBATE AND DIVORCE DIVISIONS.

(Interlocutory List.)

Divorce Offer E C v Offer E N
Cousins v International Brick Co ld
Divorce Abbott M K v Abbott G H

FROM THE KING'S BENCH DIVISION.

(Final and New Trial List.)

Howard-Watson v Dick
Blundy Clark & Co ld v London and North Eastern Railway Co
Smith v Tate & Lyle ld
Re The Arbitration Act, 1889 Golomb (Claimant) v William Porter & Co ld
Lock v The Texas Oil Co ld
Moss Empires ld v Pennington
Planter v Martin
Robertson v Arnatt
Harrods ld v Lemon
The King v The London County Council (exparte The Entertainments Protection Assoc ld)
Stokes v Gough
Hamilton, Mackay & Co v Russell
Evans v Hinge
Manchester Corporation v Bolton Assessment Committee and Little Hulton Urban District Council
Same v Bolton Assessment Committee and Westhoughton Urban District Council
MacColl & Pollock ld v The Indemnity Mutual Marine Assurance Co ld
The Calico Printers Association ld v Barclays Bank ld

FROM THE KING'S BENCH DIVISION.

(Revenue Paper—Final List.)

Attorney-General v Yule

(Interlocutory List).

Clare v Barnard
The British Homophone Co ld v Sykes

FROM THE ADMIRALTY DIVISION.

(Final List.)

With Nautical Assessors.

Scheer—1929—Folio 310 The Commissioners for executing the Office of Lord High Admiral v The Owners of ss Scheer

RE THE WORKMEN'S COMPENSATION ACTS.

(From County Courts.)

Edwards v Penrikyber Colliery Co ld
Bradshaw v Richardson, Westgarth & Co ld
Pogson v Tunnacliffe
Mason v Foster

Standing in the "ABATED" List·

FROM THE CHANCERY DIVISION.

(Interlocutory List.)

Siemens & Halske v The Western Electric Co ld pt hd (s.o. generally)

(Final List.)

Re Companies Act, 1929 Re Gow, Wilson & Stanton ld (s.o. generally)

FROM THE KING'S BENCH DIVISION.

(Final List.)

African Selection Trust ld v Came (s.o. generally)

(Interlocutory List.)

Selfridge Provincial Stores ld v Financial Telegraph and ors (s.o., pt hd, liberty to apply)

FROM THE PROBATE AND DIVORCE DIVISION.

Blake, F G v Blake, M T (stayed until payment of damages into court)

HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

For the purpose of securing the more speedy disposition of business and especially of the shorter Witness Actions, the Judges of the Chancery Division are divided into two groups of three each, and there are three lists, namely: The Non-Witness List, the Witness List Part I, into which the shorter Witness Actions will go, and the Witness List Part II, into which the longer Witness Actions will go.

GROUP I.—Mr. Justice EVE, Mr. Justice MAUGHAM and Mr. Justice BENNETT.

GROUP II.—Mr. Justice CLAUSON, Mr. Justice LUXMOORE and Mr. Justice FARWELL.

HILARY SITTINGS, 1931.

GROUP I.

Mr. Justice EVE will take Part I of the Witness List. Companies (Winding up) business will be taken on each Monday.

Mr. Justice MAUGHAM will take the Non-Witness business as set out in the Hilary Sittings Paper.

Mr. Justice BENNETT will take Part II of the Witness List.

GROUP II.

Mr. Justice CLAUSON will take the Non-Witness business as set out in the Hilary Sittings Paper.

Mr. Justice LUXMOORE will take Part II of the Witness List.

Mr. Justice FARWELL will take Part I of the Witness List. Bankruptcy business will be taken as announced in the Hilary Sittings Paper.

GROUP I.

Before Mr. Justice EVE.

Witness List. Part II.

For Judgment.

The Paterson Engineering Co ld v The Candy Filter Co ld
MacCaw v MacCaw
Mallards ld v Gibbons Bros. "Rotary" Co ld
Re Mallard's ld Design No. 742,187 and re Patents and Designs Acts, 1907 to 1919
Hartman v Konig

Retained Matters.

Re Companies (Consolidation) Act, 1908 Re Variety Theatres Controlling Co ld (fixed for Jan. 13)
Re Companies (Consolidation) Act, 1908 Re London Theatres of Varieties ld (fixed for Jan. 13)
Re Same Same (fixed for Jan. 13)
Re Same Same (fixed for Jan. 13)
Dunlop Rubber Co ld v Golf Ball Developments ld
Nicholls v Ely Beet Sugar Factory ld
Attorney-General v G & T Earle ld
Re Knoop Gould v Knoop
Gough-Cook v Gibbons

Adjourned Summons.

Re Pryse's Settlement Lewes v Pryse (fixed for Jan. 13)

Witness List. Part I.

Actions, the trial of which cannot reasonably be expected to exceed 10 hours.

S M T Gramophone Co ld v Itonia Gramophones ld
Re Trade Marks Acts, 1905 to 1919 Re Itonia Gramophones ld Trade Mark No. 475,953
Dent v Baldwin (s.o. for day to be fixed)
Richings Park Estate (1928) ld v Fuller
Nicoll v Nelson (not before Jan. 26)
Macrae-Gilstrap v Mayne
Re Grater Quelle v Buck
Wilkes v Allington
Walton Heath Land Co ld v Winant
Fisher v Harrington
Homes v Newman
Clarence Trust ld v British Netherlands Artificial Silk Co ld
Shallis v Freeman
Fisher v Aizner
Burton v Payne
Joseph v Incorporated Society of Auctioneers and Landed Property Agents
Joseph v Payne
Re Fishenden Re Married Women's Property Act, 1882
Vestergaard v Brix
Butler v Tytherleigh
The Criterion Restaurants ld v Harrison
Rose v Marconi's Wireless Telegraph Co ld
Powers Cinephone Equipment (Parent) Syndicate ld v Stourbridge Central Theatre ld
Hooper v Hooper
Hiller v F J Nathan & Company
Cooper v Mitchell
Goddard v Burton
Collins v Giles
Jeffries v Payne
Wong Soo v Fong On
Hacolsky v Hartnell
H Littlewood ld v Littleton & Co
Ford v Blackwell
Clark v Hanchett
Larcombe v May
Lotery v Pearl
Hogbin v Farmer
Pearce v Pearce
Price v Waite
Brazier v Callender
Addis v Crosse
Mansi v Rafer
City Tobacco Stores ld v Morphew
Joseph v Israel
Hadfields (Merton) ld v Seale
Wigan v F Reid Price & Co ld (restored)
Fell v The Derby Leather Co ld
Short v Bell
Lepley & Toovey ld v Lepley
Pain v Byrne
Israel v Finegold
Hirst v Coldrick
Edwards v Knowland
Mackay v The Technological Institute and Engineering College
Re Carter Watson v Carter
De Pietro v Ponton
Andrew Blair Lyell & Co ld v Rymond
Whiteley v Knott
Tigon Mining & Finance Co ld v South Tigon Mining Co ld
Mitchell v Phillips
Minns v Hammond

CHANCERY DIVISION.

Petitions.

Alliance Bank of Simla ld (to wind up—ordered on May 6, 1924 to stand over generally)
Robert Young's Construction Co ld (same—stand over from Jan. 20, 1925—liberty to apply to restore)
H A P P Tanning Co ld (same—ordered on June 2, 1926 to stand over generally)
Dillwyn Colliery Co ld (same—ordered on Oct. 15, 1928 to stand over generally—liberty to restore)
Pontardulais Gas Co ld (same—ordered on July 22, 1930 to stand over generally—liberty to apply to restore—retained by Mr. Justice Eve)
British Acetate Silk Corporation ld (same—s.o. from Nov. 24, 1930 to Jan. 12, 1931)
Style & Mantle ld (same—s.o. from Dec. 8, 1930 to Jan. 12, 1931)
House Builders Association ld (same—s.o. from Dec. 15, 1930 to Jan. 19, 1931)
West European Trust ld (same—s.o. from Dec. 15, 1930 to Jan. 12, 1931)
Central Industrial Securities ld (same—s.o. from Dec. 8, 1930 to Jan. 12, 1931)
Frank Chapman & Sons ld (same—s.o. from Dec. 15, 1930 to Jan. 12, 1931)
Far & Near East Exhibitions Pavilion ld (same—s.o. from Dec. 15, 1930 to Feb. 2, 1931)
Hunt & Kinniment ld (same—s.o. from Dec. 15, 1930 to Jan. 19, 1931)
Peter Jackson ld (same—s.o. from Dec. 8, 1930 to Jan. 12, 1931)
Ice-Drome Hammersmith ld (same—s.o. from Dec. 15, 1930 to Jan. 26, 1931)
Arnold Williams & Co ld (same—s.o. from Dec. 8, 1930 to Jan. 12, 1931)
Clapham Fine Art Co ld (same—s.o. from Dec. 8, 1930 to Jan. 12, 1931)
Lewis Jameson & Co ld (same—s.o. from Dec. 15, 1930 to Jan. 12, 1931)
Carcraft ld (same—s.o. from Dec. 15, 1930 to Jan. 12, 1931)
British Indestructo Glass ld (same—s.o. from Dec. 15, 1930 to Jan. 12, 1931)
Bolivia Concessions ld (same—s.o. from Nov. 24, 1930 to Jan. 12, 1931)
Asbestos & Holdings Trust ld (same—s.o. from Dec. 17, 1930 to Jan. 13, 1931—retained by Mr. Justice Maugham)
M Cotton ld (to wind up)
Adey Radio ld (same)
Delivery Machines ld (same)
Shaftesbury Distribution Co ld (same)
Chez Taglioni Restaurant ld (same)
Fur Fabric Co ld (same)
Dudeney Hurndall & Tubbs ld (same)
Armore Trading & Transport Co ld (same)
Madame Shaw ld (same)
Meryl ld (same)
French British & Foreign Trust ld (same)
Super Automatic Machines (1928) ld (same)
Sidney's ld (same)
Davies Stone & Browning ld (same)
Coutts Cinema Co ld (same)
Cosham Picture House ld (same)
Cohen & Levene ld (same)
Henry G Lewis & Co ld (same)
Campbell Agencies ld (same)
Portnoi & Morris ld (same)
Town Line (London) ld (same)
Pioneer Dental Suppliers ld (same)
Metduro ld (same)
John Knill & Co ld (same)
Tyler Wilson & Co ld (same)
Haw & Co ld (same)
Sybils (Liverpool) ld (same)
Mark Lewis & Co ld (same)
Stage Pictorial Publishing Co ld (same)
International Cinematograph Corporation ld (same)
F A H Hales ld (same)
Paul Ruinart (England) ld (to confirm reduction of capital)
British Woollen Cloth Manufacturing Co ld (to confirm reduction of capital—ordered on Dec. 8, 1930 to s.o. generally—liberty to restore)
Sutton Park ld (to confirm reduction of capital)
Geo W Wheatley & Co ld (to confirm reduction of capital)
Bridges & Co ld (to confirm reduction of capital)
G Hinchliffe & Co ld (to confirm reduction of capital)
Tinsley Park Colliery Co ld (to confirm reduction of capital)
Xetal Safety Glass ld (to confirm reduction of capital)
Robert Farrow & Co ld (to confirm reduction of capital)
Nuneaton Wool & Leather Co ld (to confirm reduction of capital)
West Mexican Mines ld (to confirm reduction of capital)
W & G du Cros ld (to confirm reduction of capital)
John H Fleming & Co ld (to confirm reduction of capital)
Manton & Mole ld (to confirm reduction of capital)
Elite Picture Theatres (Hastings and Bristol) ld (to confirm reduction of capital)
South West Electricity ld (to confirm reduction of capital)
Mid European Corporation ld (to confirm alteration of objects—ordered on Dec 15, 1930 to s.o.g.)
Chester Queen Railway Hotel ld (to confirm alteration of objects)
Lilley Leather Co ld (to confirm alteration of objects)
Sheffield Steel Products ld (to confirm alteration of objects)
National Institute for the Blind (to confirm alteration of objects)
Maypole Dairy Co ld (to sanction Scheme of Arrangement)
Home & Colonial Stores ld (to sanction Scheme of Arrangement)
Meadow Dairy Co ld (to sanction Scheme of Arrangement)
Pearks Dairies ld (to sanction Scheme of Arrangement)
R & J Pullman ld (to sanction Scheme of Arrangement)
Barrow Haematite Steel Co ld (to sanction Scheme of Arrangement & confirm reduction of capital—s.o. from Dec 15, 1930 to Jan 13, 1931—retained by Mr. Justice Maugham)
New England & General Trust ld (to confirm alteration of objects and reduction of capital)
E W Rudd ld (to confirm reorganisation of capital)
Colchester Brewing Co ld (sec 155)
Queen's Club Gardens Estates ld (sec 155)
Western Mansions ld (sec 155)
Freeman Hardy & Willis ld (sec 155)
Light Castings ld (sec 155)
Falkirk Iron Co ld (sec 155)
Sinclair Iron Co ld (sec 155)
British Columbia Electric Railway Co ld (sec 155)
Metallic Seamless Tube Co ld (sec 155)
Chesterfield Tube Co ld (sec 155)
British Italian Banking Corporation ld (sec 155)

Motions.

John Dawson & Co (Newcastle) on-Tyne) ld (s.o.g. by consent-
S Jacobs & Co ld (ordered on March 15, 1921 to s.o.g.)
H C Motor Co ld (ordered on July 5, 1921 to s.o.g.)
R Maurice & Co ld (ordered on April 5, 1927 to s.o.g.)
Paul Cheyney ld (ordered on Oct 14, 1930 to s.o.g.—liberty to restore)

Adjourned Summonses.

Vanden Plas (England) ld (with witnesses—parties to apply to fix day for hearing)
Fairbanks Gold Mining Co ld (ordered on July 26, 1921 to s.o.g.)
Blisland (Cornwall) China Clay Co ld (ordered on Dec 16, 1921 to s.o.g.)
French South African Development Co ld Partridge v French South African Development Co ld (ordered on April 2, 1914 to s.o.g. pending trial of action in King's Bench Division)
Economic Building Corpn ld (with witnesses) (ordered on July 3, 1923 to s.o.g.)
Economic Building Corpn ld (ordered on July 3, 1923 to s.o.g.)
Atkey (London) ld (ordered on Jan 22, 1924 to s.o.g.)
Direct Fish Supplies ld (ordered on Feb 3, 1925 to s.o.g.)
Norman Wright & Barrett ld (appln of Founders Trust & Investment Co ld (ordered on March 18, 1930 to s.o.g.—liberty to restore)
City Equitable Fire Insce Co ld (appln of Liverpool & London and Globe Insce Co ld (ordered on April 8, 1930 to s.o.g.—liberty to restore—retained by Mr. Justice Maugham)

Wm Muirhead MacDonald Wilson and Co ld (appln of H Bolton—with witnesses—ordered on Oct 27, 1930 to s.o.g.—liberty to apply to restore)
Blyth Shipbuilding & Dry Docks Co ld (appln of R S Dagleish—with witnesses)
Coueism ld (appln of Liquidator)
William Pretty & Sons ld (appln of F H Fletcher—with witnesses)
Same (appln of M M Macnamara—with witnesses)
Multidoor ld (appln of R Ward)
Charterhouse Caterers ld (appln of T C Gordon)
Transmutograph ld (appln of G L George—with witnesses)
Queensland Printing Works Co ld (appln of Liquidator)
Round Hill Mining Co ld (appln of H M Attorney-General)
Foundation Co ld British Steamship Investment Trust ld v Foundation Co ld (appln of United Steel Co ld)
Hotel Cecil ld (appln of Liquidator)
Linen & Artsilk ld (appln of E Pinkey & ors)
Same (appln of A P Salter—with witnesses)
Same (appln of W H Latchford)
Maurice Freres ld (appln of Liquidator—with witnesses)
Little Wadhurst Farm ld (appln of Liquidator—with witnesses)
Linen & Artsilk ld (appln of S C Gray—with witnesses)

Before Mr. Justice Maugham.
For Judgment.

Witness List. Part I.

Re Vickery Vickery v Stephens
Retained Action.

Witness List. Part I.

Re Steuart Reid v Bean (fixed for Jan 12)
Further Considerations.
Young v Clapson
Re Stenhouse Musgrave v Stenhouse

To be continued.

Legal Notes and News.

New Year Legal Honours.

KNIGHTS BACHELOR.

Edward Percival Clarke, Esq., Senior Prosecuting Counsel to the Crown at the Central Criminal Court.

Alfred Howarth, Esq., solicitor, for many years Town Clerk of Preston.

His Honour Judge Thomas Artemus Jones, K.C., J.P., formerly British Commissioner on the Mexican Claims Commission.

Daniel Lleufer Thomas, Esq., M.A., LL.D., J.P., for many years Stipendiary Magistrate for Pontypridd and Rhondda.

Herbert William Wrangham Wilberforce, Esq., Deputy Chairman, County of London Sessions.

Robert Young, Esq., O.B.E., M.P., J.P., Chairman of Committees, House of Commons since 1929.

Mr. Justice John William Fisher Beaumont, K.C., Barrister-at-law, Chief Justice in the High Court of Judicature, Bombay.

Ali Muhammad Khan Dehlavi, Esq., barrister-at-law, President of the recently prorogued Legislative Council, Bombay.

Mr. Justice Hubert Grayhurst Pearson, barrister-at-law, Puisne Judge of the High Court of Judicature at Fort William in Bengal.

Khan Bahadur Mirza Zaffar Ali, Punjab Civil Service (retired), lately Puisne Judge of the High Court of Judicature at Lahore, Punjab.

Oscar de Glanville, Esq., C.I.E., O.B.E., barrister-at-law, Burma.

Lancelot Henry Elphinstone, Esq., Chief Justice of the Federated Malay States.

Sidney Orme Rowan-Hamilton, Esq., Chief Justice of Bermuda.

ORDER OF THE BATH.

C.B.

Henry Arthur Augustus Ellis, Esq., a Senior Clerk in the House of Commons.

Ioan Gwilym Gibbon, Esq., C.B.E., Principal Assistant Secretary, Ministry of Health.

Alfred Edward Stamp, Esq., M.A., F.S.A., Deputy Keeper of the Public Records, and Keeper of the Inland Revenue Records.

ORDER OF ST. MICHAEL AND ST. GEORGE.

G.C.M.G.

Charles William Orde, Esq., Counsellor in the Foreign Office.

K.C.M.G.

Montague John Rendall, Esq., M.A., LL.D.

ORDER OF THE INDIAN EMPIRE.

C.I.E.

James Augustine Sweeney, Esq., Indian Civil Service, Judicial Secretary and Legal Remembrancer to the Government of Bihar and Orissa.

George Hemming Spence, Esq., Indian Civil Service, Joint Secretary and Draftsman to the Government of India, Legislative Department.

ORDER OF THE BRITISH EMPIRE.

C.B.E.

James Hubert Taylor, Esq., Deputy Controller of Death Duties, Estate Duty Office, Board of Inland Revenue.

George Alexander, Esq., President of the Court of Appeal, Ministry of Justice, Iraq.

O.B.E.

Frank Richard Marten, Esq., Assistant Solicitor, India Office.

Major Robert Walter Mellish, Judge of Alderney.

Stanley Webb-Johnson, Esq., Assistant Solicitor to the Government of India.

Nicholas Julian Paterson, Esq., K.C., lately Attorney-General of Grenada, Windward Islands.

M.B.E.

Arthur James Stone, Esq., Registrar of the High Court and Administrator-General, Nyassaland Protectorate.

Honours and Appointments.

The Leeds City Council have appointed Mr. H. R. McDowell (the prosecuting Solicitor) to be senior Assistant Solicitor in succession to the late Mr. W. E. H. Campbell; Mr. A. F Greenwood has been appointed prosecuting Solicitor; and Mr. H. R. Wormald Assistant Solicitor.

Mr. Arthur S. Ruddock, Solicitor, South Shields, has been appointed Assistant Solicitor in the office of the Town Clerk of Middlesbrough.

Mr. Fred Webster, solicitor, Deputy Town Clerk of Manchester, has been appointed Town Clerk of Kensington.

Mr. A. D. M. Edwards, solicitor, Brighton, has been appointed Clerk to the Steyning Justices.

Mr. T. Broughton Nowell, Assistant Solicitor, Bolton, has been appointed Deputy Town Clerk and Deputy Clerk of the Peace for the County Borough of Burton-on-Trent.

Professional Partnerships Dissolved.

Leslie Francis Montague Williams and Lancelot Frederick Andrewes, solicitors, 17, Middle-street, Brighton; 64, Boundary-road, Hove; and 1, Station Approach, Lancing, Sussex, dissolved by mutual consent as from 29th September, 1930, so far as concerns L. F. Andrewes, who retires from the firm. L. F. Montague Williams will continue to carry on the business under the same style or firm as heretofore.

Cecil John Fairfax Kynaston and John Compton Carter, solicitors, 35, Queen Victoria-street, London, E.C.4 (Sayle, Carter & Co.), dissolved by mutual consent as from 25th December, 1930, so far as concerns C. J. F. Kynaston, who retires from the firm. The business will be carried on in the future by J. C. Carter, at 99, Cannon-street, London, E.C.4, in partnership with William Wallace Hargrove and Charles Spencer Golding under the style or firm of Sayle, Carter & Co.

Arthur Murray Ingledew, Hugh Murray Ingledew and Hamilton Walker Crawford, solicitors, Lloyds Bank Chambers, Wind Street, Swansea, Glamorgan (Ingledew, Sons & Crawford), dissolved by mutual consent as and from 24th December, 1930.

William Simpson Hannam, Arthur Thomas Holmes and Cecil Denbigh Hannam, solicitors, City Chambers, Leeds (North & Sons), dissolved by mutual consent as from 26th November, 1930. The business will be carried on in the future by W. S. Hannam and C. D. Hannam.

WINTER ASSIZE DATES.

The following have now been fixed as Commission Days for the Winter Assizes on the North-Eastern Circuit: Newcastle, 9th February; Durham, 17th February; York, 26th February; Leeds, 4th March. The Judges are Mr. Justice Hawke and Mr. Justice Macnaghten. Civil and Criminal business and Divorce causes will be taken at all the towns.

MIDLAND BANK LIMITED.

The Directors of the Midland Bank Limited report that, full provision having been made for all bad and doubtful debts, the net profits for the year 1930 amount to £2,318,689 which, with £859,258 brought forward, makes £3,177,947, out of which the following appropriations amounting to £1,332,861 have been made:—

Interim dividend for the half-year ended 30th June last, at the rate of 18 per cent. per annum less income tax, paid 15th July, 1930	£982,861
Bank premises redemption fund	£250,000
Officers' pension fund	£100,000
A dividend for the half-year ended 31st December, 1930, at the rate of 18 per cent. per annum less income tax, payable 2nd February, 1931, is recommended	£993,799
leaving to be carried forward a balance of ..	£851,287

For the year 1929 the net profits amounted to £2,665,042, and the dividends were at the rate of 18 per cent.

ASSIZE COURT JURISDICTION.

The Recorder of Bedford (Mr. Victor Russell) took the unusual course at the Bedford Quarter Sessions on Wednesday of declining to allow a bill to go to the Grand Jury, holding that, as the accused was committed to that court from a division of the County of Bedford and as the Assizes for the county would be held within one month of the committal, the Assize Court was the appropriate court. The recognizances of the accused, committed from Leighton Buzzard on a charge of burglary, were increased.

OPERATION OF THE ROAD TRAFFIC ACT.

Solicitor's Objection Overruled.

The suggestion put forward by Sir Henry Theobald in a letter published in *The Times* of 24th December that the Road Traffic Act, 1930, was not in operation was adopted by Mr. E. D. Berry, a solicitor defending a motorist summoned at Reading yesterday for an alleged offence under the Act.

Mr. Berry said he wished to make a formal objection to the Road Traffic Act, 1930, and to submit that it was not in force. If at a later date it was found that the Act was not in force, magistrates who had imposed fines under the Act would be open to action for damages. Section 123 of the Act read:—"This Act shall come into operation on such day or days as the Minister may appoint, and the Minister may fix different days for different purposes and different provisions of this Act."

The Act received the Royal Assent on 1st August and had become a Statute. If the Act was not in operation, then s. 123 was not in operation. There was no "appointed date" as to when it was to come into force, and the operation was suspended until the date fixed by the Minister, but he had no power to do so, as the Act was not in operation. He hopes that the Bench would take the bull by the horns and say that he was right in his contention, so that the matter could go to the Divisional Court for a decision. It would not be the first time a Minister had done something which was *ultra vires*.

The Magistrates' Clerk said that he would advise the magistrates that the Act was in order and was in force. Accordingly the magistrates overruled Mr. Berry's objection.

LONDON BUILDING ACT TRIBUNAL.

The Tribunal of Appeal under the London Building Act, 1930, was recently reconstituted when Mr. Arnold Inman (Barrister-at-Law) was appointed President in place of the late Mr. A. A. Hudson, K.C. The other members of the tribunal are Mr. Dendy Watney, a past president of the Chartered Surveyors' Institution, and Sir Banister Fletcher, President of the Royal Institute of British Architects. Mr. H. P. Mead is the clerk of the tribunal.

The latest case referred to the tribunal was in connexion with the height of buildings in Mayfair. The Act provides that a building shall not be erected to a greater height than 80 feet, but the London County Council may consent to the limit being exceeded. Since 1894, when the London Building Act came into existence, sanction to build up to heights of over 80 feet has frequently been given, but until last month only two cases had gone to the Tribunal by way of Appeal.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (1st May 1930) 3%. Next London Stock Exchange Settlement Thursday, 22nd January, 1931.

	Middle Price 7 Jan. 1931.	Flat Interest Yield.			Approximate Yield with redemption		
English Government Securities.		£	s.	d.	£	s.	d.
Consols 4% 1957 or after	91⅜	4	7	2	—		
Consols 2½%	57⅜	4	6	7	—		
War Loan 5% 1929-47	103½	4	16	7	—		
War Loan 4½% 1925-45	101½	4	8	8	4	7	3
War Loan 4% (Tax free) 1929-42	97⅞	4	0	2	4	0	1
Funding 4% Loan 1960-90	94⅝	4	4	6	4	5	0
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	97	4	2	6	4	3	3
Conversion 5% Loan 1944-64	106¼	4	14	1	4	12	9
Conversion 4½% Loan 1940-44	101½	4	8	8	4	7	0
Conversion 3½% Loan 1961	81¾	4	6	8	—		
Local Loans 3% Stock 1912 or after	68	4	8	3	—		
Bank Stock	267½	4	9	9	—		
India 4½% 1950-55	87	5	3	6	5	8	9
India 3½%	64	5	9	5	—		
India 3%	55	5	9	1	—		
Sudan 4½% 1939-73	99xd	4	10	11	4	11	0
Sudan 4% 1974	91	4	7	11	4	9	4
Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.)	84½	3	11	0	4	1	0
Colonial Securities.							
Canada 3% 1938	91	3	5	11	4	8	6
Cape of Good Hope 4% 1916-36	97	4	2	6	4	11	6
Cape of Good Hope 3½% 1929-49	85	4	2	4	4	14	6
Ceylon 5% 1960-70	102xd	4	18	0	4	17	6
Commonwealth of Australia 5% 1945-75	77½	6	9	0	6	11	8
Gold Coast 4½% 1956	98	4	11	10	4	12	6
Jamaica 4½% 1941-71	98	4	11	10	4	12	0
Natal 4% 1937	97	4	2	6	4	11	9
New South Wales 4½% 1935-1955	67½	6	13	4	8	5	0
New South Wales 5% 1945-65	72½	6	17	11	7	2	6
New Zealand 4½% 1945	98	4	11	5	4	14	0
New Zealand 5% 1946	102	4	18	0	4	16	6
Nigeria 5% 1950-60	103xd	4	17	1	4	16	6
Queensland 5% 1940-60	74½	6	14	3	7	1	6
South Africa 5% 1945-75	102	4	18	0	4	17	6
South Australia 5% 1945-75	76½	6	10	9	6	13	4
Tasmania 5% 1945-75	82½xd	6	1	3	6	3	0
Victoria 5% 1945-75	77	6	9	10	6	12	0
West Australia 5% 1945-75	78½xd	6	7	5	6	10	6
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corporation	66	4	10	11	—		
Birmingham 5% 1946-56	105	4	15	3	4	13	6
Cardiff 5% 1945-65	102	4	18	0	4	17	6
Croydon 3% 1940-60	75	4	2	2	4	11	0
Hastings 5% 1947-67	105	4	15	3	4	14	3
Hull 3½% 1925-55	82xd	4	5	4	4	14	9
Liverpool 3½% Redeemable by agreement with holders or by purchase	78	4	13	4	—		
London City 2½% Consolidated Stock after 1920 at option of Corporation	57	4	7	9	—		
London City 3% Consolidated Stock after 1920 at option of Corporation	68	4	8	3	—		
Metropolitan Water Board 3% "A" 1963-2003	69	4	6	11	—		
Metropolitan Water Board 3% "B" 1934-2003	70	4	5	9	—		
Middlesex C.C. 3½% 1927-47	86xd	4	1	5	4	14	6
Newcastle 3½% Irredeemable	74	4	14	7	—		
Nottingham 3% Irredeemable	66	4	10	11	—		
Stockton 5% 1946-66	102xd	4	18	0	4	17	6
Wolverhampton 5% 1946-56	104	4	16	2	4	14	6
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	86	4	13	0	—		
Gt. Western Railway 5% Rent Charge	102	4	18	0	—		
Gt. Western Rly. 5% Preference	95½	5	4	9	—		
L. & N.E. Rly. 4% Debenture	75½	5	4	7	—		
L. & N.E. Rly. 4% 1st Guaranteed	74½	5	7	5	—		
L. & N.E. Rly. 4% 1st Preference	55½	7	4	2	—		
L. Mid. & Scot. Rly. 4% Debenture	81	4	18	9	—		
L. Mid. & Scot. Rly. 4% Guaranteed	78	5	2	7	—		
L. Mid. & Scot. Rly. 4% Preference	62	6	9	1	—		
Southern Railway 4% Debenture	83	4	16	5	—		
Southern Railway 5% Guaranteed	101	4	19	0	—		
Southern Railway 5% Preference	92	5	8	8	—		